BAIL SLIP

The Petitioner/Accused was directed to be released on Bail in and by the order of this Court dt.17.06.2004 made in Crl.Mis.Petition of 4079 of 2004 in Crl.Rc.650/04 on the file of the High Court Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.650 OF 2004
and
Crl.M.P.No.4080 of 2004

Velusamy ..Petitioner

-vs-

State
rep.by Sub Inspector of Police
Mulanur Police Station
Mulanur,Dharapuram Taluk
Erode District
Cr.No.228/98 .. Respondent

This Revision is filed against the Judgment of the learned Additional Sessions Judge(Fast Track Court No.3) Dharapuram in C.A.No.158 of 2003 dated 18.3.2004.

For petitioner :: Mr.N.Manoharan
For respondent :: Mr.V.R.Balsubramanian
Addl. Public Prosecutor

O R D E R

This revision has been preferred against the Judgment in C.A.No.158 of 2003 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.3) Dharapuram which had arisen out of the Judgment in S.C.No.55 of 2000 on the file of the Assistant Sessions Judge, Dharapuram. The accused who was charged under Section 307 of IPC and was convicted and sentenced by the Courts below to undergo seven years rigorous imprisonment and to pay a fine of Rs.5000/- with default sentence, is the revision petitioner herein before this Court.

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2)The short facts relevant for the purpose of deciding this revision sans irrelevant particulars are as follows:
Due to previous enmity, in connection with a land dispute, on 11.12.1998 at about 9.30 a.m., the accused had assaulted P.W.1 Palanisamy with an aruval on his neck both the legs, fingers, head , right ear, forehead causing grievous injuries and the accused was charged under Section 307 of IPC.

3) The learned Judicial Magistrate, Dharapuram,after taking cognizance of the offence, had issued summons to the accused and on his appearance furnished copies under Section 207 of Cr.P.C. And since the case is triable exclusively by a Court of Sessions had committed the case under Section 209 of Cr.P.C. The trial Court viz., the Assistant Sessions Judge, Dharapurama on appearance of the accused had framed charge under Section 307 of IPC and when questioned, the accused pleaded not guilty.

4) Before the trial Court, P.Ws 1 to 13 were examined. Exs P1 to P17 were exhibited and M.O.1 to M.O.4 were marked.

5) P.W.1,Palanisamy is the victim. According to him, he had entered into a sale agreement with one Palanisamy,s/0 Karuppanna Gounder, Ayagoundanpalayam and has also paid a sum of Rs.25,000/- towards the partial consideration of the sale amount and that the accused Velusamy is the nephew of the proposed vendor Palanisamy. From the date of the sale agreement itself, the accused has criminally intimidated P.W.1 on the ground that if any one who purchase the said property, he will be murdered by him and in this connection P.W.1 had also preferred a complaint with the Mulanur Police Station. Thereupon, the police also warned the accused and before the police, he had given an undertaking that he will not intimidate any one in future in respect of the said land. On 11.12.1998, when P.W.1 was in the said land, was removing thorny bush , the accused came there and criminally intimidated and assaulted him with an aruval on the left side of his neck, both the thighs repeatedly which resulted him to fell on the ground. Thereafter, the accused claimed on his chest and once again assaulted with the same aruval on the head, fore head and chest repeatedly and while he resisted the attack, the fingers of the left hand also got injured and in the melee, the accused also got injured on his left hand . On hearing the distress call raised by P.W.1, Chellan, Kattaiyan, Kathirvel,Kanagaraj came to his rescue but the accused had left the place of occurrence towards east with the weapon and that he became unconscious and he was taken to Amaravathi Hospital at Karur later he was referred to K.G.Hospital, Coimbatore where he had preferred Ex P1 complaint to the Sub Inspector of Police. He has also identified M.O.1 as an Aruval used by the accused at the time of occurrence. M.O.2 is the blood stained lungi handed over by P.W.1 to the Sub Inspector of Police in the hospital.

5a) P.W.2 is an eye witness to the occurrence who would corroborate the evidence of P.W.1. According to him,at the time of occurrence, the

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accused had assaulted P.W.1 on his left side of the neck, both the legs, head , forehead repeatedly causing grievous injuries and that the injured was removed to the hospital.

5b) P.W.3 Kathirvel has also seen the injured at the place of occurrence with injuries all over his body and also had seen the accused going towards east from the place of occurrence with the weapon. He had removed the injured in a taxi to private nursing home at Karur from where the injured was referred to K.G.hospital, Coimbatore.

5c) P.W.4 is a witness in Ex P2 Mahazar who had not supported the case of the prosecution. Hence he was treated as a hostile witness. P.W.5 is the another witness in Ex P4 mahazar under which M.O.2 was recovered by P.W.13.

5d) P.W.11 is the then Sub Inspector of Police,Mulanur Police Station . On the basis of the information, he had received through wireless, proceeded to K.G.Hospital, Coimbatore on 11.12.1998 at about 10.00p.m. and recorded the statements from the injured P.W.1 who was under treatment as an in patient in the said hospital which is Ex P1. On the basis of Ex P1, he had registered the case under Mulanur Police Station Crime No.228 of 1998 under Section 307 of IPC against the accused .Ex P12 is the first information report.

5e) P.W.13 is the Investigating Officer in this case. On 11.12.1998 at about 1-0.00a.m., he had visited the place of occurrence and prepared observation mahazar Ex P2 in the presence of P.W.4 and another witness and had drawn a rough sketch Ex P14 and had seized the blood stained sand and sample sand under ExP15 and went to the hospital where the injured was taking treatment in the K.G.Hospital, Coimbatore and had recovered M.O.2 blood stained lungi from P.W1 in the presence of P.W.5 under Ex P4 mahazar. He had arrested the accused on 14.12.1998 at about 1.00p.m., and had recorded the voluntary confession statement of the accused in the presence of P.W.6. The admissible portion of the confession statement is Ex P5. On the basis of the confession statement, the accused took him and the other witnesses to his land and took out an aruval from the hidden place which was recovered by P.W.13 under Ex P6 mahazar in the presence of P.W.6. M.O.1 is an aruval. M.O.3 and M.O.4 are wearing apparels of the accused at the time of the occurrence. The Investigating Officer has also seen the accused for treatment since he had also suffered injury on his left hand. He has examined the witnesses and recorded their statements.

5f)P.W.7 is the doctor who had examined the injured at Amaravathy Hospital at Karur at 11.00 a.m., on 11.12.1998. On examination , he found a cut injury on the nap measuring 25 cm x 25 cm bone deep. Injury No.2 cut injury on the left side of the neck measuring 15cm x 15 cm and a cut injury on the right pinna and a lacerated injury on the left finger and a cut injury measuring 10x 6 cm on the left thigh near the knee bone deep. Injury No.6.three cut injuries measuring 10 cm x 10cm, measuring 10cm x 7cm x 3 cm x 2cm, on the left thigh. Three cut injuries on his right

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knee measuring 5 cm x 5 cm 2. 7 cm x 5 cm 3. 6 cm x 5 cm. An abrasion on the chest. Injury No.9 cut injury measuring 8 cm bone deep on the left fore arm. Since the condition was precarious, he was immediately referred to K.G.Hospital, Coimbatore, after giving first aid and has also intimated to the police Station .Ex P7 is the intimation given by him to the Karur Police Station. The doctor has opined that the above said injuries would have been caused with a weapon like M.O.1 and that the above said injuries are sufficient to cause even death.

5g) P.W.8 is the Doctor who had examined the accused on 11.12.1998 for the injuries he had sustained the cut injury on the left fore arm and that he has admitted in the hospital as an inpatient for three days. P.W.9 is the doctor who would examine P.W1 on 14.12.1998 at about 8.50p.m., at Government Hospital, Dharapuram. Ex P8 is the copy of the accident register issued by him for the injuries found in the person of P.W.1.

5h) P.W.10 is the doctor in K.G.hospital, Coimbatore who had examined P.W.1 at 2.10 p.m on 11.12.1998 and found the following injuries.
"A cut injury on the left leg measuring 4cm x 1cm x 1 cm near femur bone . A curved cut injury measuring 12 cm x 2 cm x 1 cm middle of left thigh. A curved cut injury measuring 15 cm x 2 cm just above the injury No.2. A cut injury measuring 15 cm x 3 cm x 3cm on the left thigh which was found sutured. A small portion of the bone in the left thigh bone was found fractured. On the left knee another cut injury measuring 2cm x 1 cm. A cut injury on the left index finger the bone in the left index finger was found fractured. Two cut injuries measuring 2cm x 1 cm near the left middle finger. A cut injury measuring 5cm x 1 cm on the left ring finger. Another cut injury measuring 3cm x 1 cm on the left ring finger. A small cut injury on the left small finger. A cut injury on the left shoulder measuring 15cm x 5cm x 2 cm. A cut injury measuring 5cm x 1cm x 1 cm on the lower portion of the right leg , 2 irregular cut injuries measuring 5cm x 1cm x ½ cm on the right knee and an abrasion measuring 10cm x ¼ cm on the right chest. A cut injury below the neck measuring 5cm x ½ cm . A cut injury near the right pinna. A cut injury behind the right ear measuring 15cm x 3 cm x 3 cm . A cut injury measuring 3 cm x 1 cm on the right side of the fore head. A cut injury measuring 10 cm x 2 cm on the centre portion of the head. Bone in the skull was also found fractured. A cut injury near the left side of the neck near chin". He had also taken nine x-rays for the above said injuries. Ex P9 series are the said X-rays. Ex P10 series are the C.T.Scan photographs. Ex P11 is the wound certificate issued by P.W.10. P.W.12 is the radiologist in K.G.Hospital, Coimbatore. According to him, X-ray were taken to P.W.1 on 17.12.1998 in the said hospital and that he had handed over the x-rays in the office of the said hospital. P.W.13 had examined the doctors and recorded their statements. After completing the formalities, he had filed the charge sheet against the accused on 23.2.1999 under Section 307 of IPC.

6) When incriminating circumstances under Section 313 of Cr.P.C.were put to the accused, he would totally deny his complicity with the crime.

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7)After going through the oral and documentary evidence adduced before the trial Court, the learned trial Judge has found the accused guilty under Section 307 of IPC and accordingly convicted and sentenced him to undergo seven years rigorous imprisonment and also slapped a fine of Rs.5,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused had preferred an appeal before the Additional District and Sessions Judge(Fast Track Court NO.3) Dharapuram in C.A.No.158 of 2003. The learned Sessions Judge/Fast Track Judge, after scanning the evidence and also after giving due consideration to the submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor has held that there is no reason to interfere with the findings of the learned trial Judge and accordingly confirmed the Judgment of the learned trial Judge thereby dismissing the appeal preferred by the accused which necessitated the accused to prefer this revision petition.

8) When the matter was taken up for hearing, Mr.N.Manoharan, the learned counsel appearing for the revision petitioner would represent that he is going to argue only on the sentence and not on merits. The learned counsel would represent that all along the accused was a farm servant of P.W.1 and only due to the misunderstanding developed between him and P.W.1 in connection with the purchase of adjacent land on the date of occurrence, the occurrence had occurred and that the accused is now prepared to
pay a substantial amount towards compensation to the victim if the victim is prepared to accept the same. The learned Additional Public Prosecutor also was heard on this point who had took time to consult the victim through the police and to day both the victim P.W.1 and the accused were present in the Court and when P.W.1 victim was asked whether he is willing to receive the compensation amount, he said that he is not very particular to send the accused inside the prison but he is very particular that the accused who is his erstwhile farm servant himself shall feel sorry for his act. The accused also realized his inhuman act and felt sorry for the way in which he had conducted himself on the date of occurrence by assaulting his own master with a deadly weapon.

9) The learned counsel appearing for the revision petitioner would rely on a decision reported in Baldev Singh -v-State of Punjab(AIR 1996 Supreme Court 372) in a case under Section 304(i) of IPC, the accused who was awarded five years was modified by the Apex Court by awarding a compensation of Rs.35,000/- to the family of the deceased. In Rakkia Gounder-v- State by Inspector of Police, Uthukuli Police Station, Erode District (2007(2) CTC 168) in a case of similar nature,the learned Judge of this Court has awarded Rs.20,000/- as compensation instead of five years rigorous imprisonment. In a decision reported in Sarup Singh-v-State of Haryana represented by the Home Secretary,(AIR 1995 Supreme Court

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2452) wherein the accused who was charged under Section 304 (ii) IPC was sentenced for seven years was modified as a compensation of Rs.20,000/- to the legal representatives of the victim.

10) The learned Additional Public Prosecutor had drawn the attention of this Court in a Judgment of the Honourable Apex Court in Badrilal-v-State of M.P(2005(7) Supreme Court Cases 55) and contended that even though a case under Section 307 of IPC is not compounable if a joint petition of compromise under Section 320 of IPC was filed even in a case where the accused is facing the charge under Section 307 of IPC , it can be taken into consideration. But in the present case on hand, both victim and the accused were present and the victim P.W.1 is amenable for receiving the compensation of Rs.50,000/-. Under such circumstances, I am of the view that the sentence awarded by the Courts below is liable to be modified as indicated above.

11) In fine, the revision is dismissed but the sentence alone is modified to that of the period already undergone and a fine amount of Rs.50,000/- is imposed on the accused. The entire amount is directed to be paid to P.W.1 victim as compensation under Section 357(1) of Cr.P.C. The accused is directed to deposit the said amount of Rs.50,000/- before the learned Judicial Magistrate, Dharapuram /committal Court on or before 1.8.2007. This compensation amount of Rs.50,000/- is apart from the fine/compensation amount awarded by the trial Court. In case, the accused fails to deposit the said amount before the stipulated time, the conviction and sentence imposed by the Courts below will sustain. Consequently, connected Crl.M.P.No. 4080 of 2004 is also dismissed.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional District and Sessions Judge/fast Track Court No.3, Dharapuram.

2. The District and Sessions Judge, Dharapuram

3. The Assistant Sessions Judge, Dharapuram.

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4. -The Judicial Magistrate, Dharapuram

5. -do through the Chief  Judicial Magistrate,Erode

6. The Public Prosecutor, High Court, Madras

7. The Sub Inspector of Police, Mulanur Police Station, Mulanur,, Dharapuram Taluk, Erode.

8. The Superintendent at Central Prison,Coimbatore

+ 1 cc to M/s.N.Manokaran, Advocate Sr.No.43903.

AKR(CO)
dcp/19.7.07 Crl.R.C.No.650/2004

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